and its execution by the Sergeant-at-Arms was followed by an application for habeas corpus. *Held,* that the House of Representatives had no power to punish the petitioner for contempt. *Marshall* v. *Gordon,* (Apr., 1917), 37 Sup. Ct. —.

Though early decisions seem doubtful on the subject (see *Ex parte Nugent,* 18 Fed. Cas. No. 10,375), it has long since been decided that neither branch of Congress has any general power to punish non-members for contempt. Such limited power as exists arises only by implication and rests upon the right of self-preservation—that is, the right to prevent acts which in and of themselves obstruct or prevent the discharge of legislative duty or the refusal to do that which there is an inherent legislative power to compel in order that legislative functions may be performed; and it is "the least possible power adequate to the end proposed." *Anderson* v. *Dunn,* 6 Wheat, 204; *Kilbourn* v. *Thompson,* 103 U. S. 168. The principal case decides that such implied power does not embrace *punishment* for contempt, as punishment, and hence that the House of Representatives had no power to imprison the petitioner for a contempt which "was deemed to result from the writing of the letter not because of any obstruction to the performance of legislative duty * * * but because of the effect and operation which the irritating and ill-tempered statements made in the letter would produce upon the public mind or because of the sense of indignation which it may be assumed was produced by the letter upon members of the committee and of the House generally." The court is careful to point out that the *legislative* power to make criminal every form of act which can constitute a contempt to be punished according to the orderly process of law is not subject to the strict limitation applicable to the accessory implied power to deal with particular acts as contempts outside of the ordinary process of law, citing *In re Chapman,* 166 U. S. 661.

COPYRIGHTS—PERFORMANCE FOR PROFIT OF A MUSICAL COMPOSITION.—The plaintiff was the owner of a copyrighted musical composition which was sung in defendant's restaurant without permission. The music was furnished merely as entertainment to the diners, and no admission fee was charged. The plaintiff sued defendant for infringement. The Circuit Court of Appeals had held that this was not a public performance for profit within the meaning of the COPYRIGHT ACT of March 4, 1909, (COMP. STAT. 1913, §9517). *Held,* that the decision of the Circuit Court of Appeals should be reversed. *Herbert* v. *Shanley,* (1917), 37 Sup. Ct. 232.

For the first time the supreme court of the United States has passed upon the meaning of the words "publicly for profit" in the COPYRIGHT ACT. The court of appeals in *Herbert* v. *Shanley Co.,* 229 Fed. 340, 143 C. C. A. 460, construed the act as pertaining only to performances where an admission fee or some direct pecuniary charge is made. Justice HOLMES, who delivered the opinion of the Supreme Court, has the support of the English case of *Sarpy* v. *Holland & Savage,* [1909], 99 L. T. 317, in his proposition that the music is part of what was paid for by the public. The learned justice says in the principal case: "It is true that the music is not the sole object but

neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise, give a luxurious pleasure not to be had from eating a silent meal." In addition to the principal point involved, it is possible to conclude the courts' opinion as to two other matters. In the first place, it is not the wages of the musician that makes the performance one for profit, but rather the purpose for which his employer engages him. Thus if a band is hired by a public-spirited citizen to play in a park, the latter would not be guilty of an infringement of copyrighted music played. The court also intimates that it would distinguish between a performance for profit and an eleemosynary one. For instance, a performance by a church choir would probably be considered an eleemosynary one one rather than one for profit even if the music increased the attendance and in that manner swelled contributions. The principal case is a valuable one in the interpretation of this clause of the COPYRIGHT ACT, both as to the point actually decided and as to the other conclusions which may fairly be drawn from the opinion.

CORPORATIONS—EFFECT OF DECISION OF DIRECTORS AND SHAREHOLDERS IN DETERMINING WHETHER THEIR ACT IS WITHIN THE EXPRESS OR IMPLIED POWERS OF THE CORPORATION.—The board of directors of defendant bank had entered into a contract with defendant X, who had for many years been president of the institution, by which they paid him $50,000, in return for which he relinquished claims under the pension system of the bank and agreed, on his resignation, not to engage in the banking business with any other bank in the city for a certain period of time. Plaintiff, owning less than 1% of the shares of the bank, brings the present equitable action to have this contract set aside. *Held,* that while the action of the directors and shareholders (who had both affirmed the pension plan) had no legal weight in determining the construction of the express powers of a corporation, their judgment, while not conclusive, is entitled to consideration in determining whether a given action is within the implied powers of the corporation, and that shareholders of a national bank have incidental power to create a pension fund for the benefit of officers and employees. *Heinz* v. *National Bank of Commerce,* 237 Fed. 942, (C. C. A. 1916).

The authorities cited for this doctrine are MORSE, BANKS AND BANKING, §54; 1 MACHEN, MODERN LAW OF CORPORATIONS, §§67, 87-90; THOMPSON, CORPORATIONS, (2nd ed.), §§2100-2129. The sections cited in MORSE and THOMPSON, neither in the text nor in the cases cited, give any *direct* support to the doctrine advanced in the instant case. Nor, we submit, does the *text* in MACHEN. The last named author does, however, give an effective discussion of the power of a corporation to dispense gratuities to its servants, and in the English cases cited by the author we find ample authority for the doctrine of the instant case. Thus in *Atty.-Gen.* v. *Great Eastern Ry.,* 11 Ch. D. 480, JAMES, L. J., says: "The majority of managing partners may be trusted, and ought to be trusted, in determining for themselves what they may do and to what extent they may go in matters directly connected with, or arising out